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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------|-------------|----------------------|---------------------|------------------|
| 10/574,336 | 03/30/2006 | Werner Kozek | 0119010-00147 | 7807 |
| 29177 | 7590 | 03/20/2009 | EXAMINER | |
| K&L Gates LLP | | | TRAN, PHUC H | |
| P.O. BOX 1135 | | | ART UNIT | |
| CHICAGO, IL 60690 | | | PAPER NUMBER | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/574,336 | Applicant(s) KOZEK ET AL. | |
| | Examiner PHUC H. TRAN | Art Unit 2416 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 19, 20, 22-23, 29, and 35-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Carlson et al. (Patent No. 7499453).

- With respect to claims 19 and 36, Carlson teaches a method for setting the transmission parameters of transmission channels combined in a group, comprising: setting transmission parameters for each transmission channel as a function of the determined transmission characteristics of the respective transmission channel and of an assigned service, with the transmission channels in each case being assigned one of at least two services having different value ratings (e.g. fig. 25 shows each users have different SLAs on different cable 2732 in fig. 27); mutually influencing the transmission channels of the group through spectral interference

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(e.g. the load balancing is between groups 2738 in Fig. 27); identifying the influencing relationships between the transmission channels by continual determination of the spectral interference in the transmission channels and of the status changes of the transmission channels (e.g. the adjustment of SLA as in Fig. 32); and optimizing the transmission parameters of the transmission channels as a function of the identified influencing relationships and the value rating of their respective services (see Fig. 31).

- With respect to claim 20, Carlson also teaches wherein a plurality of subgroups of transmission channels is classified as a function of the influencing relationships (e.g. groups 2738 in Fig. 27 as function of user class).

- With respect to claim 22, Carlson teaches wherein the transmission parameters of the transmission channels are continually optimized at regular or predefinable time intervals or upon status changes, as a function of the identified influencing relationships and the value rating of their respective services (e.g. Fig. 31 is period monitor and change the channels).

- With respect to claim 23, Carlson discloses wherein the value rating of the services is dependent on charges to be achieved with the respective services or on a guaranteed transmission quality or guaranteed transmission capacity or a guaranteed transmission speed (e.g. SLA as the user can purchase for the cable network).

- With respect to claim 29, Carlson implicitly teaches wherein a unidirectional transmission channel is considered as one transmission channel and a bidirectional transmission channel is considered as two transmission channels (it is inherently to understand unidirectional and bidirectional transmission is one and two channel to a person of ordinary skill in the art).

- With respect to claim 35, Carlson discloses wherein the transmission meters of the transmission channels are in each case referred to an OFDM or a DMT transmission method (e.g. optical cabling in HFC network).

Allowable Subject Matter

3. Claims 21, 24-28 and 30-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUC H. TRAN whose telephone number is (571)272-3172. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHI PHAM can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PHUC H TRAN/
Examiner, Art Unit 2416